

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JOHN BURTON,

Plaintiff,

vs.

KERI ANN JANDA and TRACY S.  
COLLINS,

Defendants.

NO. CV-06-287-FVS

ORDER DENYING MOTION FOR  
RECONSIDERATION

By Order filed December 4, 2006, the court dismissed Plaintiff's complaint for failure to state cognizable claims under 42 U.S.C. § 1983. Judgment was entered and the file closed (Ct. Recs. 27 and 28). On January 4, 2007, the court received a *pro se* document titled Second Amended Complaint which was liberally construed as a Motion for Reconsideration (Ct. Rec. 30).

This court is allowed, under Fed. R. Civ. P. 60(b), to reconsider and amend a previous order in narrow circumstances. A litigant may seek relief from an order or judgment based on: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered before the court's decision; (3) fraud by the adverse party; (4) the judgment is void; (5) the judgment has been satisfied; or (6) any other reason

1 justifying relief. Fed. R. Civ. P. 60(b). "[T]he major grounds that  
2 justify reconsideration involve an intervening change of controlling  
3 law, the availability of new evidence, or the need to correct a clear  
4 error or prevent manifest injustice.'" *Pyramid Lake Paiute Tribe of*  
5 *Indians v. Hodel*, 882 F.2d 364, 369 n. 5 (9th Cir. 1989) (quoting 18 C.  
6 Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 4478).

7 Here, there is no basis for reconsideration. Plaintiff continues  
8 to challenge his conviction in state court, asserting ineffective  
9 assistance of counsel and the use of perjured testimony. He has not  
10 demonstrated his confinement and conviction has been invalidated. As  
11 set forth in the court's dismissal Order, Plaintiff's § 1983 claim may  
12 not proceed at this time. See *Preiser v. Rodriguez*, 411 U.S. 475, 487-  
13 90 (1973); *Heck v. Humphrey*, 512 U.S. 477, 481 (1994). Therefore, **IT**  
14 **IS ORDERED** Plaintiff's Motion for Reconsideration (Ct. Rec. 30) is  
15 **DENIED**.

16 **IT IS SO ORDERED.** The District Court Executive is directed to  
17 enter this Order, forward a copy to Plaintiff at his last known  
18 address, and close the file.

19 **DATED** this 16th day of January 2007.

20  
21 s/ Fred Van Sickle  
22 FRED VAN SICKLE  
23 UNITED STATES DISTRICT JUDGE  
24  
25  
26  
27